

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 TRSE-00 CA-01 IO-13 ACDA-12 CIAE-00
PM-05 H-01 INR-10 L-03 NSAE-00 NSC-05 PA-01
SP-02 SS-15 ICA-11 /092 W
-----022496 222022Z /42

R 211512Z APR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 7919
INFO DIA WASHDC
USMISSION USNATO
USNMR SHAPE
CINC USAREUR HEIDELBERG
CINC USAFE RAMSTEIN
CINC EUR VAIHINGEN

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E.O. 11652: N/A
TAGS: MORG, MPOL, GW
SUBJECT: FRG MILITARY SERVICE LAW

REFS: A) BONN 6792 DTG 131849Z APR 78
B) BONN 3011 DTG 161830Z FEB 78

BEGIN SUMMARY: ON APRIL 13, 1978, THE FEDERAL CONSTITUTIONAL COURT RULED THE FRG'S LIBERALIZED DRAFT LAW UNCONSTITUTIONAL. THE COURT ARGUED THAT MILITARY AND ALTERNATE CIVILIAN SERVICE ARE NOT EQUAL METHODS OF DISCHARGING ONES OBLIGATION TO THE STATE AND THAT ALTERNATE CIVILIAN SERVICE STATUS CAN BE GRANTED ONLY TO THOSE WHO HAVE PASSED AN APPROPRIATE EXAMINATION OF THEIR REASONS FOR REFUSING COMBATANT STATUS. THE GOVERNMENT NOW HAS THE OPTION OF RESTRUCTURING THE ALTERNATE CIVILIAN SERVICE CONCEPT BY EXTENDING THE PERIOD OF SERVICE TO TWENTY-FOUR MONTHS, FROM EIGHTEEN,

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AND MAKING CIVILIAN SERVICE A MORE DEMANDING FORM OF ALTERNATE SERVICE. ONE JUSTICE DISSENTED, ARGUING THAT IN ALL CASES IN WHICH MILITARY OR COMBATANT SERVICE IS A FACTOR, PERSONAL CONSCIENCE WAS ABSOLUTELY SOVEREIGN. POLITICAL YOUTH GROUPS PLAN A SERIES OF PROTESTS AGAINST THE COURT'S DECISION THROUGHOUT THE FRG. THE GOVERNMENT IS PRESENTLY IN THE PROCESS OF

IDENTIFYING WAYS OF IMPROVING BOTH THE QUALITY AND QUANTITY OF ALTERNATE CIVILIAN SERVICE INCLUDING ITS EXTENSION AND THE INTRODUCTION OF A MORE REGIMENTED AND FORMALIZED STRUCTURE. END SUMMARY.

1. ON APRIL 13, 1978, THE FEDERAL CONSTITUTIONAL COURT IN KARLSRUHE DECLARED UNCONSTITUTIONAL THE FRG'S LIBERALIZED MILITARY DRAFT LAW WHICH HAD ENTERED INTO EFFECT ON AUGUST 1, 1977.

2. THE COURT IN A SEVENTY PAGE JUSTIFICATION OF ITS RULING STATED THAT THE NEW LEGISLATION WAS NOT COMPATIBLE WITH THE CONCEPT OF EQUALITY BEFORE THE LAW; WITH THE FREEDOM OF FAITH AND CONSCIENCE OR WITH THE GUARANTEES OF RELIGIOUS AND IDEOLOGICAL LIBERTY PROVIDED UNDER THE FRG'S BASIC LAW (GRUNDGESETZ).

3. EQUITY UNDER THE LAW OF CONSCRIPTION, THE COURT STATED, DEMANDS THAT ONLY THOSE DRAFTEES BE CLASSIFIED AS CONSCIENTIOUS OBJECTORS WHO ARE DEEMED TO MEET THE PREREQUISITES OF ARTICLE 4 OF THE BASIC LAW, WHICH STATES THAT NO INDIVIDUAL MAY BE COMPELLED AGAINST THE DICTATES OF HIS CONSCIENCE TO PERFORM COMBATANT SERVICE.

4. THE DECISION WENT ON TO SAY THAT THE CONCEPT OF ALTERNATE CIVILIAN SERVICE SHOULD NOT BE SEEN AS A LIMITED OFFICIAL USE

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SUBSTITUTE FOR MILITARY SERVICE, BUT WAS SPECIFICALLY WRITTEN INTO THE BASIC LAW TO PROVIDE RELIEF FOR THOSE DRAFTEES REFUSING ARMED SERVICE FOR REASONS OF CONSCIENCE.

5. THE EQUITY IN CONSCRIPTION CLAUSE OF THE BASIC LAW CANNOT BE SATISFIED, THE COURT RULED, BY OFFERING THE CONSCRIPT A CHOICE OF EITHER BEING DRAFTED FOR THE MILITARY OR PERFORMING ALTERNATE CIVILIAN SERVICE. THE BASIC LAW AS A MATTER OF PRINCIPLE REQUIRES THAT ALL MALE CITIZENS PERFORM MILITARY SERVICE AND, IN FACT, PROHIBITS THE INTRODUCTION OF THE CONCEPT OF ALTERNATE CIVILIAN SERVICE EXCEPT IN THOSE CASES WHERE THE INDIVIDUAL SPECIFICALLY REFUSES TO BEAR ARMS AS A MATTER OF CONSCIENCE.

6. THE COURTS RULING PROVIDES THE GOVERNMENT THE OPTION OF RESTRUCTURING THE ALTERNATE SERVICE FEATURE BY EXTENDING IT TO TWENTY-FOUR MONTHS, AS OPPOSED TO THE PRESENT EIGHTEEN. THIS PROPOSAL WOULD EXTEND CIVILIAN SERVICE NINE MONTHS BEYOND THE MANDATORY FIFTEEN MONTH PERIOD OF MILITARY SERVICE. THIS TYPE OF RESTRUCTURING, THE COURT REASONED, WOULD BE MORE

EQUITABLE, SINCE CIVILIAN SERVICE DOES NOT CARRY WITH
IT THE MANY BURDENS AND INCONVENIENCES THAT NATIONAL

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MILITARY SERVICE DOES.

7. THE COURT ALSO RULED THAT THE ORAL EXAMINATION
METHOD OF EXAMINING CANDIDATES REQUESTING CONSCIENTIOUS
OBJECTOR STATUS WAS CONSTITUTIONAL AND SERVED AS A
SATISFACTORY VEHICLE FOR THE ESTABLISHMENT OF
CONSCIENTIOUS OBJECTOR STATUS.

8. IN THE ONE DISSENTING OPINION, JUDGE MARTIN HIRSCH
MAINTAINED THAT THE LIBERALIZED DRAFT LAW WAS CONSTI-
TUTIONAL. HIRSCH ARGUED THAT EVEN IN CASES OF ARMED
CONFLICT NATIONAL DEFENSE PRIORITIES ARE SECONDARY TO
THE DICTATES OF INDIVIDUAL CONSCIENCE. PERSONAL
CONSCIENCE, HIRSCH ARGUED, IS ABSOLUTELY SOVEREIGN IN
ALL MATTERS RELATED TO THE POWERS OF THE STATE OR ITS
AGENTS AND THAT, CONSEQUENTLY, ANY FORM OF REFUSAL OF
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NATIONAL MILITARY SERVICE SHOULD BE HONORED AND ACCEPTED.

9. THE CONSTITUTIONAL COURT'S DECISION UNDERSTANDABLY
ELICITED DIFFERING REACTIONS FROM THE INDIVIDUAL
POLITICAL PARTIES. THE CHAIRMAN OF THE CSU FRAKTION,

FRIEDRICH ZIMMERMAN, VIEWED THE DECISION AS WARDING
OFF A SERIOUS ATTACK OF THE SPD/FDP COALITION ON CONSTI-
TUTIONAL ORDER. CDU DEPUTY WILLI WEISHIRCH EXPRESSED
THE HOPE THAT THE GOVERNMENT COALITION WILL NOW
UNDERTAKE AN UNPREJUDICED STOCK TAKING OF THE PROBLEMS
RELATED TO THE CONCEPT OF ALTERNATE CIVILIAN SERVICE.
SPD DEPUTIES GERHARD JOHN, GUENTHER BIERMANN AND
HELMUT MOEHRING SAID THAT THE SPD WILL MAKE A DETAILED
ANALYSIS OF THE COURT'S DECISION AND ATTEMPT TO
COORDINATE ANY FUTURE LEGISLATION ON THIS ISSUE WITH
THE LAENDER GOVERNMENTS. FDP DEPUTIES JUERGEN
MOELLEMANN, DETLEF KLEINERT AND DIETRICH HOELSCHER ALSO
AGREED THAT A COMPLETE REVIEW OF THE PRESENT SYSTEM WAS
NEEDED, WITH SPECIAL EMPHASIS ON ANALYZING THE PRESENT
FORM OF ORAL EXAMINATION OF APPLICANTS APPLYING FOR
CONSCIENTIOUS STATUS WITH A VIEW TOWARD DEVELOPING OTHER
MEANS OF EXAMINATION TO DETERMINE SUCH STATUS.

10. THE FEDERAL MINISTRY OF LABOR, WHICH HAS THE
RESPONSIBILITY OF IMPLEMENTING THE ALTERNATE CIVILIAN
SERVICE PROGRAM, ISSUED A STATEMENT INDICATING THAT
THEY WILL CAREFULLY REVIEW THE COURT'S RULING AND WILL
MAKE EVERY EFFORT TO USE THE MANEUVERING SPACE LEFT BY
THE DECISION TO EXPAND THEIR CAPACITY FOR THOSE
OPTING FOR ALTERNATE CIVILIAN SERVICE AND TO ATTEMPT
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TO IMPROVE THE QUALITY AND QUANTITY OF SUCH WORK, SO
THAT THOSE RENDERING SUCH SERVICE ARE PERFORMING DUTIES
MORE ON PAR IN TERMS OF PERSONAL INCONVENIENCE AND
DIFFICULTY WITH THAT PERFORMED BY MEMBERS OF THE
BUNDESWEHR.

11. THE ORGANIZATION OF CIVILIAN SERVICE ENLISTEES,
SUPPORTED BY THE YOUNG SOCIALIST AND YOUNG DEMOCRAT
YOUTH GROUPS PLANS FRG WIDE PROTESTS AGAINST THE COURT'S
RULING. SPOKESMEN FOR THESE ORGANIZATIONS ATTACKED THE

COURT'S DECISION AS JEOPARDIZING DEMOCRACY IN THE FRG.
THE GROUPS PLAN PROTEST ACTIONS IN MORE THAN 200 CITIES,
WHICH WILL INCLUDE THE PUBLIC BURNING OF MILITARY SERVICE
BOOKS (WEHRPAESSE) AND LIMITED HUNGER STRIKES.
ORGANIZATION REPRESENTATIVES WERE SHARPLY CRITICAL OF
PROPOSALS CALLING FOR A MORE REGIMENTED MILITARY-LIKE
ALTERNATE CIVILIAN SERVICE AND CALLED FOR THE EXPANSION
OF ADDITIONAL CIVILIAN SERVICE POSITIONS IN THE CIVILIAN
SECTOR.
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Message Attributes

Automatic Decaptoning: Z

Capture Date: 01 jan 1994

Channel Indicators: n/a

Current Classification: UNCLASSIFIED

Concepts: CONSCRIPTION, MILITARY LAW, COURT DECISIONS

Control Number: n/a

Copy: SINGLE

Draft Date: 21 apr 1978

Decaption Date: 20 Mar 2014

Decaption Note: 25 YEAR REVIEW

Disposition Action: RELEASED

Disposition Approved on Date:

Disposition Case Number: n/a

Disposition Comment: 25 YEAR REVIEW

Disposition Date: 20 Mar 2014

Disposition Event:

Disposition History: n/a

Disposition Reason:

Disposition Remarks:

Document Number: 1978BONN07498

Document Source: CORE

Document Unique ID: 00

Drafter: n/a

Enclosure: n/a

Executive Order: N/A

Errors: N/A

Expiration:

Film Number: D780172-1089

Format: TEL

From: BONN

Handling Restrictions:

Image Path:

ISecure: 1

Legacy Key: link1978/newtext/t19780428/aaaaaxuo.tel

Line Count: 234

Litigation Code IDs:

Litigation Codes:

Litigation History:

Locator: TEXT ON-LINE, ON MICROFILM

Message ID: 361c54a9-c288-dd11-92da-001cc4696bcc

Office: ACTION EUR

Original Classification: LIMITED OFFICIAL USE

Original Handling Restrictions: ONLY

Original Previous Classification: n/a

Original Previous Handling Restrictions: n/a

Page Count: 5

Previous Channel Indicators: n/a

Previous Classification: LIMITED OFFICIAL USE

Previous Handling Restrictions: ONLY

Reference: 78 BONN 6792

Retention: 0

Review Action: RELEASED, APPROVED

Review Content Flags:

Review Date: 31 mar 2005

Review Event:

Review Exemptions: n/a

Review Media Identifier:

Review Release Date: n/a

Review Release Event: n/a

Review Transfer Date:

Review Withdrawn Fields: n/a

SAS ID: 2882763

Secure: OPEN

Status: NATIVE

Subject: FRG MILITARY SERVICE LAW

TAGS: MORG, MPOL, GE

To: STATE

Type: TE

vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/361c54a9-c288-dd11-92da-001cc4696bcc

Review Markings:

Sheryl P. Walter

Declassified/Released

US Department of State

EO Systematic Review

20 Mar 2014

Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014